

**FLORIDA STATE UNIVERSITY  
DEPARTMENT OF POLITICAL SCIENCE**

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**POS 4606—The Supreme Court in American Politics—Spring 2014  
Mondays and Wednesdays, 3:35-4:50**

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1:00 pm – 4:00 pm (or by appointment made via email)

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### **COURSE DESCRIPTION**

Of the three branches of government the judicial branch arguably receives the least amount of attention from the general public. With the notable exceptions of increasingly contentious confirmation hearings and socially divisive decisions from the highest court, most Americans are unaware of the current goings on of our nation's courts and the constitutional developments that have occurred over time. The purpose of this course is, in part, to provide a broad overview of the evolution of our Supreme Court and to examine how it has shaped our government and our society. Unlike constitutional law courses taught in law schools, the focus of the course will not be on case law alone but will provide political and social context to some of the most important decisions the Supreme Court has ever made.

Consider that in the last fifteen years the United States Supreme Court has determined the winner of a Presidential election, has ruled on whether or not the government can require individuals to obtain and maintain health insurance, has weighed in on which individuals can or cannot get married, has spoken as to whether and how marijuana should be controlled...the list goes on. Suffice it to say, many of the most pressing questions of the day find their way to the Supreme Court. How that institution has viewed its own role, how it has interpreted the Constitution, and how it will continue to both in the future will have lasting effects.

Generally, American Constitutional Law can be divided into two parts. The first examines the institutions created by the Constitution and the powers granted them. The second focuses on individual rights and liberties of citizens. This course will survey the former. We will study the creation and ultimate ratification of the Constitution as well as the establishment, evolution, and clash of the institutions created therein. We will read, think, and write about how the Supreme Court has (and may be should have)

addressed important debates, and how it should (or should not) address new disputes in the future. By the end of the semester you will have a greater understanding (and hopefully appreciation) for the role of the Supreme Court in American Politics.

## **COURSE READINGS**

The majority of the readings for this class will come from the following book, which is available at the campus bookstore:

Epstein, Lee, and Thomas G. Walker. 2011. *Constitutional Law for a Changing America: Institutional Powers and Constraints*, 7<sup>th</sup> Edition. CQ Press. (Referred to as “EW”)

Additional readings will be made available via the class Blackboard site or can be found on the Internet. The following online resources may be useful as well:

- [www.supremecourt.gov](http://www.supremecourt.gov) (U.S. Supreme Court official website)
- [www.scotusblog.com](http://www.scotusblog.com) (SCOTUS blog – blog for fans of the Supreme Court)
- [www.oyez.com](http://www.oyez.com) (audio files of arguments and information on hundreds of Court cases)

## **BLACKBOARD**

This course is supported by a Blackboard website to which you should all have access. Along with the syllabus and additional readings that I post there, I will also use the site to send out announcements, e-mails, and/or other communications. As such, you are expected to regularly check the course site as well your own FSU e-mail account that is associated with it. Additionally, I can be contacted through the site as well as at the e-mail address listed above.

## **COURSE EVALUATION AND ASSIGNMENTS**

Final grades will be based on the following scale:

<b>Percent</b>	<b>Letter Grade</b>	<b>Percent</b>	<b>Letter Grade</b>	<b>Percent</b>	<b>Letter Grade</b>
93 - 100	A	80 - 82	B-	67 - 69	D+
90 - 92	A-	77 - 80	C+	63 - 66	D

87 - 89	B+	73 - 76	C	60 - 62	D-
83 - 86	B	70 - 72	C-	0 - 59	F

Your individual grade will be based on three papers, two exams, occasional quizzes and homework assignments, and class participation.

***Papers (15% each; 45% total)***

Almost half of your grade in this class will be determined by three out-of-class writing assignments. There is a tentative list of topics included at the end of the syllabus from which you can choose, and each topic has a specific due date that is indicated in the course schedule below. Topics for the final paper as well as due dates will be distributed later in the semester. None of the topics require any additional reading than what has been assigned in class, and you are discouraged from doing any outside reading or research. The purpose of the papers is for you to demonstrate that you have read the material thoroughly, engaged with it, and can communicate your ideas about it in a concise and well thought out manner. This will necessarily require a close and detailed reading of the materials, and you should be sure to provide references to the readings as well as page citations.

Each paper needs to be double-spaced, typed in a standard 12-point font (Times New Roman is preferred), and should be approximately 4 pages in length. Margins on the paper should be set at 1-inch for top, bottom, and both sides. Please note that typing a few sentences on a fourth page does not constitute four pages. Each of the topics poses some rather broad questions, and you will not be penalized if your discussion carries over to a fifth page. However, you should work to be both concise and thorough and present a clear argument with carefully selected support for it.

A hard copy of each paper is due by the beginning of the class on the date indicated in the schedule. Additionally, you will submit an electronic copy of your paper to turnitin.com through a link that will be available in the Blackboard site by 6:00 p.m. on the day that you turn in a paper. Late papers will only be accepted under unusual circumstances and, then, only with my express permission. Everyone must turn in at least one paper by **February 10**, at least two papers by **March 24**, and at least three by **April 23**. If you wish, you may turn in a fourth paper (by the last day of class) and I will drop the lowest of your other paper grades.

### ***Midterm Examination (20%) and Final Examination (25%)***

Each of the examinations in this class will be in-class, closed-book examinations. The Midterm will include only the material that we have gone over in class to that point, and the Final will only include information that we cover after the Midterm. I will provide more detail as to the structure of each exam prior to the dates that are listed for each in the schedule below.

### ***Participation (10%)***

You will not do well in this class if you do not regularly attend class and do not complete the readings ahead of time. However, I expect more of you than to skim the day's reading and passively attend class. This portion of your grade will reflect your daily preparation for class, your in-class contributions, and your active engagement with both the course materials and with your classmates. Constitutional Law is a subject that invites discussions and questions, and to actively engage the subject you must have read the material beforehand and spent some time thinking about it as well.

Every student will be called on at least once throughout the semester to discuss a case in some detail. Early in the semester I will provide a handout that will help you organize your thoughts and notes for readings case. You might be asked to recite the facts of a case, the main argument of a case, or to argue against the ultimate holding of a case. Failure to be prepared or present when called upon will adversely affect your grade. With that said, you have one free pass this semester. Before class (you can e-mail me or let me know in person before class starts) simply tell me not to call on you that day and I will not.

Finally, I reserve the right to schedule occasional quizzes to ensure that you are keeping up with the assigned reading. You must be present to complete any quiz.

### **Additional Notes About Grades**

If you have a specific question regarding the grade you receive on an assignment, I am happy to discuss that with you. However, you should e-mail me to set up an appointment and include in the e-mail the basis for your question and an explanation for why the grade should be changed.

Grades that end in .5 or higher are rounded up to the nearest whole percentage point.

## CLASSROOM POLICIES AND EXPECTATIONS

1. Make up examinations are given only with prior instructor approval and/or appropriate documentation of a medical or family emergency. Please notify me as soon as you know that you cannot attend either of the scheduled exams so alternate arrangements can be made.
2. As a courtesy to the class, cell phones and other electronic devices should be turned off or set to silent/vibrate before class begins and put away. Failure to do so will result in a deduction in your Participation grade. Additionally, while you are free to use a laptop to take notes in class, I expect that their use will be limited to that purpose. If I become aware that you are using your computer for reasons other than to enhance classroom learning, your Participation grade will suffer.
3. The classroom is a place for mutual respect. You are all adults, and I will treat you as such. However, that also means that I expect certain things from you. While I anticipate healthy debate and discussion over the course of the semester, comments and questions must be respectful of diverse viewpoints and should be designed to advance the discussion as it relates to the class and course material. Personal attacks (i.e. those aimed at another person's appearance, demeanor, political beliefs, etc.) will not be tolerated. Likewise, repeated classroom disruptions such as interrupting each other while speaking or coming into class late and leaving early are disrespectful to the entire class. If such behavior becomes an issue, your Participation grade will be lowered.
4. **Cheating and/or plagiarism will not be tolerated.** All students are expected to be familiar with the Florida State University Academic Honor Code, which states, in part:

*The academic honor system of The Florida State University is based on the premise that each student has the responsibility: (1) To uphold the highest standard of academic integrity in the student's own work; (2) To refuse to tolerate violations of academic integrity in the University community, and (3) To foster a high sense of integrity and social responsibility on the part of the University community.*

I expect students to bring possible violations of this honor code to my attention. Violations of the honor code, including cheating and plagiarism will be reported to

the University and otherwise dealt with at my discretion, consistent with FSU guidelines.

5. Students with disabilities needing academic accommodations must: (1) register with and provide documentation to the Student Disability Resource Center (SDRC); and (2) bring a letter to the instructor from the SDRC indicating that you need academic accommodations. This must be done within the first week of class.

This syllabus and other class materials are available in alternative format upon request. For more information about services available to FSU students with disabilities, contact:

Student Disability Resource Center  
874 Traditions Way  
108 Student Services Building  
Florida State University  
Tallahassee, FL 32306-4167  
(850) 644-9566 (voice)  
(850) 644-8504 (TDD)  
[sdrc@admin.fsu.edu](mailto:sdrc@admin.fsu.edu)  
<http://www.disabilitycenter.fsu.edu>

## **ANTICIPATED COURSE SCHEDULE AND READINGS**

The syllabus may be modified as necessary to reflect the pace of class. Readings may be added or removed, but nothing affecting the grading policy will change. I will post any changes online, but you are responsible for keeping track of our progress. Pages numbers in italics refer to the 8<sup>th</sup> edition of the course book.

### **I. Introduction to American Constitutionalism**

Monday, January 6: Course Introduction and Syllabus Review

- Print and bring a copy of the course syllabus to class.

Wednesday, January 8: The Role and Operation of the Court

- EW, pp. 12 – 46; 51 – 56;

- Federalist 78 (available via Blackboard)

Monday, January 13: The History of the Constitution

- EW, United States Constitution, pp. 675 – 686;
- EW, Introduction, pp. 3 – 10;
- Federalist Papers 47, 48, 49, 51 (available via Blackboard)
- **Paper option #1 is due today.**

## II. Constitutional Institutions

Wednesday, January 15: Establishing Judicial Review

- EW, pp. 58 – 88;
- **Paper option #2 is due today.**

Monday, January 20: Martin Luther King, Jr. Day - **No Class**

Wednesday, January 22: Constraining Judicial Power

- EW, pp. 89-117.

Monday, January 27: The Power(s) of Congress over Its Own Affairs

- EW, pp. 119 – 142.

Wednesday, January 29: The Power(s) of Congress over Others

- EW, pp. 143 – 178 (but skip *McGrain v. Daugherty* pp. 153-158);
- **Paper option #3 is due today.**

Monday, February 3: The Executive Institution

- EW, pp. 180 – 194;
- **Paper option #4 is due today.**

Wednesday, February 5: Powers of the Presidency

- EW, pp. 194 – 222.

Monday, February 10: Powers of the Presidency, cont'd

- EW, pp. 223 – 250;
- **Paper option #5 is due today;**
- **Everyone must have turned in at least one paper by today.**

Wednesday, February 12: Separation of Powers at Work

- EW, pp. 253 – 273.

Monday, February 17: Wars and Other Emergencies

- EW, pp. 273 – 296.

Wednesday, February 19: Wars and Other Emergencies, cont'd:

- EW, pp. 296 – 320;
- **Paper options #6 and #7 are due today.**

Monday, February 24:

- No new reading;
- We will finish up the chapter on separation of powers and review for the midterm examination.

Wednesday, February 26: Midterm Examination

- **The closed-book midterm exam will cover all material assigned to this point.**

### III. The Nation and its States

Monday, March 3: The Nation-State Relationship

- EW, pp. 325 – 349;
- **Paper option #8 is due today.**

Wednesday, March 5: Balancing Federal vs. State Policymaking Power

- EW, pp. 350 – 378.

Monday, March 10: Spring Break - **No Class**

Wednesday, March 12: Spring Break - **No Class**

Monday, March 17: Judicial Federalism

- EW, pp. 378 – 399;
- **Paper option #9 is due today.**

Wednesday, March 19: Congressional Authority to Regulate Commerce

- EW, pp. 400 – 428 (read through *Carter v. Carter Coal*).

Monday, March 24: Expanding and Contracting the Commerce Clause

- EW, pp. 428 – 463;
- **Paper option #10 is due today;**
- **Everyone must have turned in at least two papers by today.**

Wednesday, March 26: Additional Interpretations of “Commerce”

- EW, pp. 464 – 490.

Monday, March 31: Congress’s Other Power

- EW, pp. 492 – 517.

Wednesday, April 2:

- EW, pp. 518 – 544.

Monday, April 7: Substantive Due Process

- EW, pp. 585 – 602.

Wednesday, April 9: Evolving Notions of Substantive Due Process

- EW, pp. 603 – 618.

Monday, April 14: Substantive Due Process Today

- EW, pp. 619 – 640.

Wednesday, April 16: When is Your Property not Your Property?

- EW, pp. 641 – 657.

Monday, April 21: Limiting the Taking Power

- EW, pp. 658 – 665.

Wednesday, April 23:

- No new reading;
- We will cover any outstanding reading and review for the final examination;
- **Everyone must have turned in at least three papers by today.**

Wednesday, April 30: Final Examination

- **The closed-book final examination will cover all material assigned since the midterm.**

## TENTATIVE PAPER TOPICS

*Paper option #1:* In the Federalist Papers 47, 48, 49, and—especially—51, James Madison made the case for a government that would be characterized by a separation of powers. How, if at all, does the Constitution reflect his vision? Think carefully about his main arguments. Are his concerns still justified today? Has the idea of separation of powers changed at all since 1789?

*Paper option #2:* Read *Marbury v. Madison* (1803). In your own words summarize Chief Justice Marshall's argument for the Supreme Court's power of judicial review. Do not worry about the particular facts of the case, or even the holding of the case, but focus on why Chief Justice Marshall thought the Court was allowed to declare a law unconstitutional. Where in the Constitution are courts given the power of judicial review? After you have figured this argument out, evaluate it. Is it persuasive? What are some counterarguments? How important is judicial review for our constitutional system?

*Paper option #3:* Read Chief Justice Marshall's opinion in *McCulloch v. Maryland* (1819). On what basis did he conclude that the federal statute authorizing the creation of the national bank was constitutional? In other words, where did he find Congressional authority to enact the law? What possible implications does this have for the modern debate over federal health care laws? Based solely on your reading of *McCulloch*, is the Affordable Care Act (Obamacare) constitutional? Why or why not? Be specific.

*Paper option #4:* In 2000, the Supreme Court decided *Bush v. Gore* and effectively resolved the issues surrounding the disputed Presidential election. The decision has been criticized on two grounds: first, legal scholars argue that the Court should not have heard the case at all; second, critics argue that the partisan preferences of the Justices actually decided the case. Based on your understanding of the facts of the case and our discussion of justiciability (pp. 92 – 97), should the Court have heard the case? What justiciability doctrine(s) apply? Do you think the credibility of the Court was harmed by how it decided the case?

*Paper option #5:* Presidents enjoy a number of powers while in office. For example, executive privilege protects confidential documents and presidential immunity protects against civil law suits. Why do these powers exist? Where are they found in the Constitution? Use specific examples from the text to establish the broad argument for

the existence of these powers. In your opinion, should they exist at all? Why or why not? Be specific.

*Paper option #6:* Justice Jackson's concurring opinion in *Youngstown Sheet & Tube v. Sawyer* (1952) is treated by many legal scholars as the most important statement to come from the case and one of the seminal concurring opinions ever written. What is Justice Jackson's view of executive authority? How does this differ from the view of the majority? What do you think is the most appropriate view of executive authority and why?

*Paper option #7:* War has frequently been used as a justification to significantly curtail individual rights and liberties. In *Ex Parte Milligan* (1866) and *Korematsu v. United States* (1944) the Supreme Court ruled directly on President Lincoln's and President Roosevelt's actions, respectively. From these two cases, four very distinct views regarding the government's power during wartime emerge. Identify and describe each of these views. (Hint, look at the dicta used in *Milligan* and the holding in *Korematsu*, the holding in *Milligan*, and the dissents of Justices Murphy and Jackson in *Korematsu*). Which of these do you believe to be the most appropriate? Why?

*Paper option #8:* Read *Hammer v. Dagenhart* (1918). What does it say about our Constitution that the Court found that it prevents Congress from banning child slavery? Is there a defect in the Constitution—at least in 1918? Is this case reconcilable with *McCulloch v. Maryland*? Like that case, what does *Hammer* contribute to any discussion on healthcare?

*Paper option #9:* Justice Holmes' opinion in *Missouri v. Holland* is notable for a number of reasons, but chief among them is his reference to the Constitution as a living document. What does Justice Holmes mean by this? Remember back to our discussion of constitutional interpretation. Would he have reached the same decision if he adopted a different perspective? Which perspective should he have adopted? Why?

*Paper #10:* In *United States v. Lopez* (1995) and *United States v. Morrison* (2000) the Court struck down laws that, at least arguably, had very good intentions. The first case involves the prohibition of firearms near schools, while the second case involved the Violence Against Women Act. Did this represent a broadening or narrowing of the commerce power? How had Congress justified the laws in each case, and how did Chief Justice Rehnquist address the justifications? Should Congress have broad power, or

should there be more of a balanced relationship with the states? Be specific in your argument.

*Paper option #11:* James Madison and Alexander Hamilton disagreed with respect to Congressional power to tax and spend for the general welfare. Madison argued for a more narrow interpretation while Hamilton thought the power should be broadly interpreted. In reading *United State v. Butler* (1936), *Steward Machine Co. v. Davis* (1937), and *South Dakota v. Dole* (1987) does the Court come to a consensus on which view should be preferred? What limits, if any, do you think are necessary? Provide specific examples. What are the lasting implications for federal-state relations?

*Paper option #12:* The Fourteenth Amendment contains three separate mechanism designed to protect individual's economic and civil liberties. *The Slaughterhouse Cases* (1873) was one of the first cases that the Court heard following passage of that amendment, and the Court ostensibly struck down one of those mechanisms. Given the purpose of the amendment do you find the Court's ruling surprising? Contrast Justice Miller's opinion from Justice Bradley's dissent. What are the implications for both with respect to the debate on gay marriage?

*Paper option #13:* Read *Lochner v. New York* (1905). In Justice Holmes's view, what role should the Court play in our constitutional system? Would we be better off if the Court adhered to Holmes's view today? Why or why not? Be specific. Which particular constitutional conflicts would reach better resolutions today if the Court adhered to Holmes's view? Which ones would come out worse? Weighing those two categories against each other, how does it balance out?

*Paper option #14:* Justice O'Connor issues a scathing critique of the majority opinion in *Kelo v. City of New London* (2005). Principally, she argues that the ruling "effectively [to] deletes the words 'for public use' from the Takings Clause of the Fifth Amendment." What does she mean by this? What distinction is she referring to? How would you define public use? What limitations, if any, do you think should be applicable?

*Paper option #15:* Review [this list of proposed constitutional amendments](#), some from legal experts and others from ordinary citizens. Choose one that you agree with and make the case for it. Support your argument with specific references to some of the historical constitutional conflicts that you have learned about this semester. In other words, based on what you now know about constitutional history and development, why

is it important that we change the Constitution in the way that you have proposed? As always, be specific.